BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF	§	
PRESUBSCRIBED INTEREXCHANGE	§	**CC DOCKET NO. 02-53**
CARRIER CHARGES	§	**CCB/CPD FILE NO.01-12**
	§	**RM-10131**

COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

NOW COMES THE STATE OF TEXAS (State), by and through the Office of The Attorney General of Texas, Consumer Protection Division and files these its comments on the Order and Notice of Proposed Rulemaking released March 20th, 2002 in FCC Order No. 02-42. These comments are timely filed pursuant to the Commission's subsequent order in DA-02-1171.

The Office of the Attorney General submits these comments as the representative of state agencies and state universities as consumers of telecommunications services in the State of Texas, and the enforcer of laws for the protection of consumers in Texas. Our comments are limited to issues that arise directly from the Commission's tentative conclusion that the issue of the PICC safe harbor needs to be revisited. We agree with the Commission that the bases upon which the safe harbor was created, the difficulty of assessing costs, what is known about the cost and the policy of discouraging excessive switching have all changed. As the Commission states in ¶ 15, the threshold matter of whether the charge should be set by market forces or should be a regulated cost-based charge is of primary importance. We also assert, and our experiences as a customer tell us, that a market-based charge is the preferable alternative as the costs for the carrier change transaction have been drastically reduced over time. This does not mean, however, that the concept of the cap should

be eliminated, it should simply be reviewed and set at something closer to a market-based level. The idea that a carrier could capture and retain business through an exorbitant PIC change charge is not unheard of and appropriate steps must be taken to avoid that result. Also, capturing costs other than those related to processing and implementing a request for a change of a carrier, as suggested by SBC in ¶16, should be avoided. Other costs, such as those related to slamming, should be recovered from the party responsible for the slam. The customer should logically only be responsible for the costs it initiates with its carrier change request.

As to the nature of the safe harbor, we believe the maximum cost should be based upon current incumbent LEC charges. As suggested in ¶20, it could be either a nationwide average of incumbent LEC charges or the current lowest incumbent LEC charge, with a carrier option of proving up a higher cost in that instance. A cap based upon this analysis of current charges is most appropriate based upon the fact that if carriers are now charging less than the cap, then there is a reasonable presumption that they are recovering their costs at whatever the level they are charging, and that competitive pressure and advances in technology will simultaneously reduce their costs and prevent them from passing through any more of the cost than necessary to their customers.

As to the issue of preventing excessive switching, we are not certain that this policy goal is still correct. With the increase in competition for long distance service, it is arguable that the PIC change charge should be kept as low as possible to prevent that price competition from being artificially inhibited. In such a highly competitive market place, which did not exist in 1984 when the cap was set, the idea of preventing excessive switching simply has no place.

The Office of the Attorney General of Texas appreciates this opportunity to provide comment on this Notice of Proposed Rulemaking.

Respectfully submitted,

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